

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JANE KANG,

Plaintiff,

v.

THE BOEING COMPANY,

Defendants.

Case No. 2:24-cv-00294-RSM

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the Court on Defendant Boeing’s Motion for Summary Judgment. Dkt #27. Plaintiff Jane Kang opposes. Dkt. #39. Neither party has requested oral argument. For the following reasons, the Court GRANTS Boeing’s Motion.

II. BACKGROUND

Jane Kang was employed by Boeing from 2010 to 2021. She was first hired as an attorney in the Boeing Law Department. Dkt #28-1 (“Kang Dep.”), 124:14–17.

Ms. Kang performed well as an attorney. Dkt #28-2 (“Station Dep.”), 22:8–23:6.

Upon hire, Plaintiff signed various policies, including Boeing’s Code of Conduct policy, and re-signed this policy annually. Dkt #28(“Shapero Decl.”), ¶ 4; Dkt. #28-3.

1 In 2018, Boeing created the Commercial Derivative Aircraft group (“CDA”) in its
2 Boeing Defense, Space, and Security (“BDS”) business unit. Kang Dep. at 130:18–21. Soon
3 after this group was formed, Boeing transferred Plaintiff to fill a Contracts Director role in this
4 BDS Finance group. Kang Dep. at 130:18–131:25. As a Contracts Director, Plaintiff led a team
5 that negotiated contracts with military and governmental customers who purchased Boeing
6 commercial derivative aircraft. Shapero Decl. at ¶ 5; Dkt. #28-4.

8 Boeing states that Ms. Kang gained a reputation for mistreating and offending her
9 colleagues, subordinates, and customers, citing to the declarations of six former co-workers
10 whose statements generally support this characterization. *See* Dkt. #29 (“Breeding Decl.”), ¶¶ 4–
11 8; Dkt. #30 (“Gillard Decl.”), ¶ 5; Dkt. #31 (“Jones Decl.”), ¶¶ 3–4; Dkt. #32 (“Malveaux
12 Decl.”), ¶¶ 5–6; Dkt. #33 (“Opdahl Decl.”), ¶ 3–5, 7; and Dkt. #35 (“Sundstrom Decl.”), ¶¶ 3–
13 8.

15 Ms. Kang denies this and states that she was being excluded from meetings and other
16 events by BDS Chief Financial Officer Carol Hibbard because of racial animus. Dkt. #40
17 (“Kang Decl.”) ¶¶ 17-18.

19 Ms. Kang will also testify that Anne Marie Bender, BDS Legal Counsel, and Becky
20 Davies, Ms. Kang’s temporary manager, were constantly “sniping” at her during meetings and
21 telling her she “was wrong.” Kang Dep. at 188:12-191:25.

22 Carol Hibbard will testify she did exclude Ms. Kang from certain meetings because Ms.
23 Kang was difficult and argumentative, and because a P-8 customer requested not to interact
24 with her. Dkt. #28-6 (“Hibbard Dep.”), 12:13–17:20.

26 Ms. Kang will also testify that she angered Boeing attorney Darrin Hostetler after giving
27 advice. Kang Dep. at 228:6–13. She states that Mr. Hostetler screamed and yelled at her about
28

1 it. *Id.*, 232:13–25. Ms. Kang further states she had several “bizarre” interactions with Boeing
2 attorney Jake Phillips saying “there were, like, fleeting things that I just don’t even know how I
3 can describe it.” *Id.*, 239:5–12. She was repeatedly unable to describe her negative interactions
4 with detail.

5 Ms. Kang states that in December 2019 her manager, Will Station, stated that the
6 situation made him uncomfortable, and that, “all I can say is that you’re the only Asian
7 executive in BDS Finance,” apparently referring to how Ms. Kang’s superiors, Ms. Hibbard and
8 Ms. Carett, thought of her. Kang Decl. at ¶ 19. Mr. Station denies making this comment. Station
9 Dep. at 57:16-58:9.

10 During a performance review on December 17, 2020, Ms. Kang asked her manager, if
11 her exclusion from meetings and problems with her team was because she was a person of
12 color, to which Mr. Station responded no. Dkt. #34 (“Steele Decl.”), ¶ 7, Ex. B.

13 Coworkers on the “Sales Team” exchanged messages referring to Ms. Kang using
14 derogatory Asian stereotypes. *See* Dkt. #41 (“Wyatt Decl.”), Ex. H (calling Kang a “ninja” and
15 the response from Tim Flood that he “love[s] it”); Ex. I (mocking Kang as liking “big words”
16 and responding, “thanks China” and “jina virus”); Ex. J (categorizing Kang as having “Chinese
17 aggression”).

18 Nevertheless, in her deposition, Ms. Kang stated that she never complained to Boeing
19 about any raced-based mistreatment during her employment. *See* Kang Dep. at 179:25-180:14;
20 275:10–16; 277:6–278:9; 279:13–281:1.

21 Ms. Kang states that in February 2021, during a call with a client, a colleague began to
22 discuss details Boeing did not have authorization to discuss and she cautioned the team to limit
23 discussions to existing authorizations. Kang Decl. at ¶ 12-15, 49-50, 59-60, 61. Boeing states
24

1 that this kind of discussion was in fact ordinary and expected to ensure compliance. Breeding
2 Decl. at ¶ 9, Dkt. #32 Malveaux Decl., ¶ 9, Dkt. #36 Voboril Decl., ¶ 9.

3 Boeing states that some of its customers did not want Ms. Kang to be part of
4 negotiations and on February 4, 2021, Ms. Kang was ordered not to communicate with clients
5 moving forward. Station Dep. at 27:14-29:19; 35:2-36:18. Boeing states that Ms. Kang did not
6 follow orders and communicated with clients she was not authorized to. Station Dep. at 45:16-
7 48:7; Dkt. #40-7.

9 Ms. Kang was fired on February 11, 2021. Kang Decl. at ¶ 62.

10 On February 9, 2024, Ms. Kang filed this suit alleging unlawful discrimination, breach
11 of contract, hostile work environment, wrongful discharge in violation of public policy and
12 retaliation for her reporting discrimination and raising compliance issues. Dkt #1-1.

14 III. DISCUSSION

15 A. Legal Standard

16 Summary judgment is appropriate where “the movant shows that there is no genuine
17 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.
18 R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Material facts are
19 those which might affect the outcome of the suit under governing law. *Anderson*, 477 U.S. at
20 248. In ruling on summary judgment, a court does not weigh evidence to determine the truth of
21 the matter, but “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco,*
22 *Inc.*, 41 F.3d 547, 549 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O’Melveny &*
23 *Meyers*, 969 F.2d 744, 747 (9th Cir. 1992)).

26 On a motion for summary judgment, the court views the evidence and draws inferences
27 in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Sullivan v.*
28

1 *U.S. Dep't of the Navy*, 365 F.3d 827, 832 (9th Cir. 2004). The Court must draw all reasonable
2 inferences in favor of the non-moving party. *See O'Melveny & Meyers*, 969 F.2d at 747, *rev'd*
3 *on other grounds*, 512 U.S. 79 (1994). However, the nonmoving party must make a "sufficient
4 showing on an essential element of her case with respect to which she has the burden of proof"
5 to survive summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

6 **B. Analysis**

7 **1. Unlawful Discrimination**

8
9 Both Title VII and WLAD prohibit employers from discriminating against employees
10 on the basis of certain classifications, including race, national origin, and gender. Under both
11 laws, courts analyze claims of individual employment discrimination under the three-phase
12 burden-shifting framework originally articulated in *McDonnell Douglas Corp. v. Green*, 411
13 U.S. 792 (1973). *See Coghlan v. Am. Seafoods Co. LLC*, 413 F.3d 1090, 1094 (9th Cir. 2005);
14 *Mikkelsen v. Pub. Util. Dist. No. 1 of Kittitas Cnty.*, 189 Wn.2d 516, 526, 404 P.3d 464, 470
15 (2017). The initial burden rests on the plaintiff to make out a prima facie case of disparate
16 treatment, which raises a rebuttable presumption of discriminatory intent. *Coghlan*, 413 F.3d at
17 1094; *see also Weil v. Citizens Telecom Servs. Co., LLC*, 922 F.3d 993, 1002 (9th Cir. 2019);
18 *Hittle v. City of Stockton, California*, 101 F.4th 1000, 1011–12 (9th Cir. 2024). Once a prima
19 facie case is established, the burden shifts to the defendant to proffer a non-discriminatory
20 reason for the alleged mistreatment. *Weil*, 922 F.3d at 1002; *Hittle*, 101 F.4th at 1012. The
21 burden then shifts back to the plaintiff to establish that the proffered reason is merely pretextual
22 and not worthy of credence, or that discriminatory animus was nonetheless a motivating factor.
23 *McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1123 (9th Cir. 2004); *Weil*, 922 F.3d at 1002;
24 *Hittle*, 101 F.4th at 1012.
25
26
27
28

1 At the summary judgment stage, the Court must “zealously guard[] an employee’s right
2 to a full trial, since discrimination claims are frequently difficult to prove without a full airing
3 of the evidence and an opportunity to evaluate the credibility of the witnesses.” *McGinest*, 360
4 F.3d at 1112.

5 **i. Prima Facie Case**

6 Ms. Kang argues that Boeing discriminated against her because of her Asian race when
7 discharging her and engaging in other adverse employment actions. Dkt #39 at 17.

8 To establish unlawful discrimination, Ms. Kang must show that she “(1) [] is a member
9 of a protected class; (2) [] was qualified for h[er] position; (3) [] experienced an adverse
10 employment action; and (4) similarly situated individuals outside h[er] protected class were
11 treated more favorably, or other circumstances surrounding the adverse employment action
12 give rise to an inference of discrimination.” *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599,
13 603 (9th Cir. 2004). Because she bears the initial burden of proof, to survive summary
14 judgment Ms. Kang must at a minimum raise a dispute of a material fact as to each element of
15 the prima facie case. *Celotex Corp.*, 477 U.S. at 322.

16 It is undisputed that Ms. Kang satisfies the first and third element, as she is a member of
17 a protected class being an Asian woman, and her employment was terminated. Boeing disputes
18 whether Ms. Kang was qualified for her position and whether similarly situated individuals
19 outside her protected class were treated more favorably, or whether there were other
20 circumstances giving rise to an inference of discrimination. *See* Dkt. #27. The Court finds that
21 Boeing’s arguments rely on genuine disputes of material fact. Although Boeing correctly points
22 out that Ms. Kang lacks evidence that shows that similarly situated individuals outside her
23 protected class were treated differently, she has presented other circumstances surrounding her
24
25
26
27
28

1 termination that could give rise to an inference of discrimination. For example, the comments
2 from Mr. Station and the derogatory remarks made by coworkers are sufficient to establish a
3 prima facie case. Therefore, the Court will move to the next step.

4 **ii. Legitimate, Nondiscriminatory Reason for Termination**

5 Boeing argues that it has met its burden to show there were multiple legitimate,
6 nondiscriminatory reasons for terminating Ms. Kang's employment because she was not
7 performing in a satisfactory manner. *See* Dkt. #27 at 12.

9 First, Boeing argues that Ms. Kang had a difficult relationship with her co-workers and
10 showed a pattern of behavior that was disruptive to the company and prevented her from
11 fulfilling her duties. Multiple declarations submitted by Boeing from former co-workers refer
12 to Ms. Kang as "extremely volatile", having a "toxic leadership style," and other similar
13 comments regarding her character. *See* Dkt. #29 ("Breeding Decl."); Jones Decl.

15 Second, Boeing argues that Ms. Kang was inappropriately communicating with clients
16 and going against direct orders from her manager. Boeing submits emails discussing Ms.
17 Kang's interactions with clients. In one instance, a client was upset after a meeting where Ms.
18 Kang "sowed significant doubt over the configuration issue in his mind" and the client was
19 upset. Dkt. #30-1. Despite the fact Ms. Kang was given instructions by her manager not to
20 participate in client engagements until she talked to him, Ms. Kang proceeded to attend a
21 meeting. *See* Dkt. #40-7.

23 Ms. Kang fails to adequately refute this evidence in her response. She mainly relies on
24 her previous performance reviews and texts between co-workers to establish her claim but fails
25 to address Boeing's evidence regarding her relationships with co-workers and clients.
26
27
28

1 The Court finds that Boeing has met its burden of production to articulate a legitimate,
2 non-discriminatory reason for terminating Ms. Kang's employment. The multiple declarations
3 from co-workers and supervisors alike give Boeing more than one valid, non-discriminatory
4 reason for terminating Ms. Kang's at-will employment. Her difficult relationships with co-
5 workers, which are not disputed by Ms. Kang, would be enough to terminate her in efforts to
6 protect Boeing's employees and improve its work environment. Additionally, her
7 communications with clients that went outside of her scope of employment, along with
8 ignoring direct orders not to communicate, are a legitimate reason to terminate her
9 employment.
10

11 **iii. Evidence of Pretext**
12

13 To show that the above reasons were pretextual, or perhaps to show direct evidence of
14 discriminatory intent, Ms. Kang argues that her eventual boss, Mr. Station, informed her that
15 "she was the subject of illegal discrimination." Dkt. #39 at 16. Ms. Kang argues that in that
16 conversation with Mr. Station he said "all I can say is that you're the only Asian executive in
17 BDS Finance" regarding how Ms. Kang's superiors, Ms. Hibbard and Ms. Carett, thought of
18 her. *Id.* Ms. Kang asserts that, although the comments were not made directly to her by her
19 superiors, Boeing is still liable. *Id.* (citing *Galdamez v. Potter*, 415 F.3d 1015, 1026 n.9 (9th
20 Cir. 2005) (explaining that an employee can prove gender discrimination "where the ultimate
21 decision-maker, lacking individual discriminatory intent, takes an adverse employment action
22 in reliance on factors affected by another decision-maker's discriminatory animus"). Ms. Kang
23 further argues that since the Court must accept Mr. Station's statement as true for this Motion's
24 purpose, and two white female superiors made that statement "it is a reasonable inference this
25
26
27
28

1 was a substantial factor in her termination” since Ms. Hibbard was “the driving force behind
2 the decision to terminate.” *Id.* at 16-17.

3 Additionally, Ms. Kang argues that there was “other evidence of racial animus by
4 Hibbard and those within the Sales Team who were pushing Hibbard and Station to terminate
5 Kang.” Dkt. #39 at 17. Ms. Kang specifically points to the instant messages between leaders of
6 the Sales Team exchanged messages referring to Ms. Kang using derogatory Asian stereotypes.
7 Ms. Kang also argues that these individuals were the same individuals “falsely spreading
8 stories of ‘customers’ being unhappy” with Kang. *See* Kang Decl. at ¶¶ 6-7, 26-27, 29, 33-41,
9 43-44. Ms. Kang points out that Washington State follows the cat’s paw theory of
10 discrimination where “the employer does not escape liability if an unbiased decision maker
11 disciplines an employee where a biased subordinate who lacks decision-making power clearly
12 caused such discipline.” *Worland v. Kitsap County*, 29 Wash. App. 2d 818, 828, 546 P.3d 446
13 (2024). Ms. Kang argues that she was “treated differently, poorly, and terminated for reasons
14 that were influenced by discriminatory animus of both people with supervisory authority
15 (Hibbard) as well as co-workers who influenced Hibbard and Station.” Dkt. #39 at 18.

16 Lastly, she argues that past written performance reviews from 2019 and 2020, as well as
17 one provided four weeks before her termination, contradict Boeing’s claim that she was not
18 performing in a satisfactory manner. She argues that her “reviews, history of success, and long
19 tenure with the company,” along with Boeing’s “shifting explanations,” create at a minimum an
20 issue of fact. *Id.*

21 In its reply, Boeing calls the coworker instant messages “stray remarks” and not
22 evidence of discrimination. Boeing points out that Ms. Kang only claims Mr. Station made a
23 comment about the demographics of the Finance team, a comment which Mr. Station has
24

1 denied making, and that Mr. Station will testify that actually there was another Asian woman
2 on the Finance executive team. Dkt. #42 at 5. Further, Boeing argues that although Ms. Kang
3 attempts to establish cat's paw liability by pointing out messages between two coworkers, she
4 has "failed to identify any evidence these peers influenced Boeing's decision to terminate her
5 employment," and therefore, summary judgment is appropriate. *Id.* Boeing argues that because
6 Ms. Kang did not offer any evidence these coworkers were involved in her dismissal "their
7 comments were stray remarks and cannot be used to establish any discriminatory intent by
8 Boeing." *Id.* at 5-6. (citing *Merrick v. Farmers Ins. Group*, 892 F.2d 1434, 1438 (9th Cir.
9 1990) (quoting *Smith v. Firestone Tire and Rubber Co.*, 875 F.2d 1325, 1330 (7th Cir. 1989)
10 (finding "stray 'remarks, . . . when unrelated to the decisional process, are insufficient to
11 demonstrate that the employer relied on illegitimate criteria, even when such statements are
12 made by the decisionmaker in issue.'").

13
14
15 Additionally, Boeing argues that Ms. Kang has failed to establish an issue of material
16 fact concerning her performance. Boeing argues that both the 2019 and 2020 performance
17 reviews Ms. Kang relies on to show there were no concerns with her behavior included
18 negative comments about "her demeanor and communications." Dkt #42 at 6. Boeing repeats
19 that Ms. Kang failed to identify "any similarly-situated individual who Boeing treated more
20 favorably than her." *Id.* at 7. Boeing argues that Ms. Kang was not able to find anyone who
21 retained their employment "after persistently belittling colleagues, angering Boeing customers,
22 and violating a direct order not to communicate with a customer." *Id.*

23
24
25 Ms. Kang's failure to point out specific instances where these comments were shared
26 with the decision-making individuals makes the cat's paw theory inapplicable. The Court finds
27 that, viewed in the light most favorable to Plaintiff, the comments by Mr. Station about Ms.
28

1 Kang's lonely status as an Asian woman in finance are uncomfortable but do not demonstrate
2 racial animus. Ms. Kang's claim is based on her own speculation as to what might have led to
3 her termination and Boeing has otherwise established a legitimate non-discriminatory reason
4 which Ms. Kang has failed to show is pretextual. Although Ms. Kang points out the derogatory
5 remarks two co-workers made, she is unable to show evidence there is a connection between
6 such comments and Ms. Hibbard, who was recognized by Ms. Kang as "the driving force
7 behind the decision to terminate". Dkt #39 at 16-17. *See Baker v. United Parcel Serv., Inc.*, 23-
8 4364, 2024 WL 5001476, at *2 (9th Cir. Dec. 6, 2024) (analyzing cat's paw theory argument
9 and finding no genuine dispute of material fact when plaintiff presented no evidence that his
10 managers (the decisionmakers) were biased against him). Given all the above, Ms. Kang has
11 failed to demonstrate evidence of pretext sufficient to survive summary judgment and this
12 claim will be dismissed.

15 **2. Wrongful Discharge in Violation of Public Policy**

16 Ms. Kang's second claim is that Boeing wrongfully discharged her in violation of
17 public policy after she reported the above discrimination and after she raised issues regarding
18 compliance with laws when handling business deals. Dkt. #39 at 19.

20 To establish a prima facie case of wrongful discharge in violation of public policy, an
21 employee must show that their "discharge may have been motivated by reasons that contravene
22 a clear mandate of public policy" and "that the public-policy-linked conduct was a significant
23 factor in the decision to discharge" them. *Mackey v. Home Depot USA, Inc.*, 12 Wash. App. 2d
24 557, 577-78, 459 P.3d 371, 384 (2020) (internal quotation marks omitted) (quoting *Martin v.*
25 *Gonzaga Univ.*, 191 Wn.2d 712, 725, 425 P.3d 837 (2018)). Courts generally limit wrongful
26 discharge in violation of public policy claims to four categories: termination for refusing to
27
28

1 commit an illegal act; termination for performing a public duty or obligation; termination for
2 exercising a legal right or privilege; and termination in retaliation for whistleblowing. *Id.* at 578

3 Once a plaintiff makes a prima facie showing that they were wrongfully discharged in
4 violation of public policy, the burden of proof shifts to the employer, who must articulate a
5 legitimate reason for the discharge. *Id.* at 580, 459 P.3d 371. The burden is one of production,
6 not persuasion, so the employer only needs to introduce evidence that, taken as true, permits the
7 conclusion that its reason was lawful. *Id.* at 580-81.

9 If the employer can articulate a legitimate reason, “the burden shifts back to the
10 employee to produce sufficient evidence to establish” that “the employer’s alleged ... reason for
11 the adverse employment action was pretextual or that even if the stated reason was legitimate,
12 ... violation of public policy also was a substantial motivating factor.” *Id.* at 581. A factor
13 supporting a retaliatory motive is a temporal proximity between the protected activity and the
14 adverse employment action. *Hollenback v. Shriners Hosps. for Child.*, 149 Wash. App. 810,
15 823, 206 P.3d 337, 344 (2009). A plaintiff’s conclusory allegations, unsupported by facts, are
16 insufficient to survive summary judgment. *Hernandez v. Spacelabs Med. Inc.*, 343 F.3d 1107,
17 1116 (9th Cir. 2003).

18
19
20 **i. Discrimination Claim**

21 Because Ms. Kang’s underlying claim for unlawful discrimination has been dismissed
22 and Boeing has adequately argued that this claim cannot survive without the underlying claim,
23 this derivative claim must also be dismissed.
24

25 **ii. Whistleblower Retaliation Claim**

26 **▪ Prima Facie Case**
27
28

1 Ms. Kang claims that Boeing terminated her employment after she engaged in
2 statutorily protected activity by raising issues regarding legal violations when handling
3 business deals. Dkt #39 at 19. Boeing disputes this framing by arguing that Ms. Kang
4 constantly engaged in similar conversations regarding compliance, that she is in essence
5 describing her day-to-day job, and that it was not a significant factor in her termination.
6 However, viewed in the light most favorable to Ms. Kang, the temporal proximity between the
7 alleged protected activity and Ms. Kang's termination is sufficient for a prima facie case.

9 **▪ Legitimate Reason for Termination**

10 Boeing admits that Ms. Kang did engage in conversations regarding compliance and
11 shared her opinion with supervisors and co-workers, however it points out that multiple co-
12 workers constantly engaged in similar discussions to ensure compliance. Breeding Decl.at ¶ 9,
13 Malveaux Decl.at ¶ 9, Voboril Decl. at ¶ 9. Boeing emphasizes the fact that Ms. Kang admitted
14 in her declaration that she was not aware of any actual violations, she only had "strong
15 suspicions" that they were occurring when she was not around. Kang Dep. at 208:3–21. Boeing
16 argues that these conclusory statements are not evidence that her termination might have been
17 motivated by her routine conversations regarding compliance issues with co-workers nor that it
18 was a *significant factor* in her dismissal. Dkt #27 at 13.

21 Furthermore, Boeing argues that Ms. Kang's claim fails because Boeing has already
22 articulated a "lawful and compelling reason for her dismissal." Dkt. #27 at 16. Boeing points
23 out again that the reason Ms. Kang's employment was terminated was her mistreatment of co-
24 workers and clients, along with her failing to follow orders to not communicate with clients.

26 The Court finds that Boeing has met its burden of production to articulate a legitimate,
27 non-retaliatory reason for terminating Ms. Kang's employment. As discussed *supra*, Boeing
28

1 has established for the purpose of this motion that the reason for terminating Ms. Kang's
2 employment was her performance, difficult relationships, and failure to comply with orders.

3 ▪ **Evidence of Pretext**

4 Ms. Kang will testify that she had a legitimate belief that her superiors were engaging in
5 legal violations, and she raised those concerns to her superiors. Kang Decl. at ¶ 12-15, 49-50,
6 59-60, 61. She argues that she was fired within less than two weeks after raising those concerns
7 and the series of events meet her burden. Ms. Kang further argues that Boeing's current
8 employees stating that Boeing followed the law is not compelling evidence and the only reason
9 she intervened was because people "seemed very prepared to go across the line." Dkt #41-7 at
10 208:3-21. Ms. Kang also argues that Boeing's assertion that she admitted she never reported
11 compliance issues is false. Ms. Kang states that she explained in her declaration and deposition
12 multiple instances where she reported the issues. Kang Decl. at ¶¶ 12-15, 46-47, 50, 59, 62 &
13 Ex. G.; *See, e.g.*, Dkt #41-7 at 208:3-21, 214:9-217:10; Dkt #41-15 ("Gillard Dep."), 51:23 –
14 52: 4.
15
16
17

18 In its reply Boeing argues that Ms. Kang's reliance on self-serving assertions in her
19 declaration is insufficient to create a genuine issue of material fact. Boeing argues that the only
20 evidence on the record regarding Ms. Kang raising compliance concerns is the email she sent to
21 Mr. Station where she informed him she "'put up a caution flag' when a client 'made clear that
22 they intend[ed] to proceed' in a fashion that had the potential to implicate certain laws
23 governing communications between certain parties." Dkt. #42 at 9. Boeing argues that Ms.
24 Kang never reported unlawful conduct while being employed at Boeing.
25

26 Ms. Kang's expected testimony about statements she made, even without a paper trail,
27 can constitute evidence. However, the Court ultimately agrees with Boeing. Although the
28

1 Court takes into consideration the relatively short period of time between Ms. Kang's email to
2 Mr. Station and her termination, there is no causal link or evidence that it was a substantial
3 factor in the decision to terminate her employment. Ms. Kang would admit that she has been
4 raising compliance issues for years now. This weakens Ms. Kang's argument that her
5 termination was in retaliation to her raising concerns on a single occasion. The Court is left
6 with the impression that she was simply doing her job. Without the timing of the firing playing
7 a role, Ms. Kang's assertions to establish pretext are otherwise speculative. There is no genuine
8 issue of material fact and this claim is properly dismissed on summary judgment.
9

10 **3. Retaliation under the WLAD**

11 Ms. Kang's third claim is that Boeing retaliated against her in violation of the WLAD
12 after she engaged in protected activities such as informing her supervisor about her treatment
13 by BDS leadership and raising issues regarding compliance. Dkt #39 at 19.
14

15 To establish a prima facie case for retaliation, the plaintiff must show (1) she engaged in
16 a protected activity, (2) the employer took an adverse action, and (3) a causal link exists
17 between the protected activity and the adverse action. *Moba v. Total Transp. Servs. Inc.*, 16 F.
18 Supp. 3d 1257, 1267 (W.D. Wash. 2014), citing *Hines v. Todd Pacific Shipyards Corp.*, 127
19 Wash.App. 356, 374, 112 P.3d 522 (2005). Retaliation claims under WLAD use the same
20 *McDonell Douglas* burden-shifting framework as discrimination claims. *Moba*, 16 F. Supp. 3d
21 at 1267. A plaintiff can show causation by showing that retaliation was a "substantial factor in
22 the adverse employment action." *Id.* Second, if Plaintiff establishes a prima facie case, Boeing
23 can rebut the claim by presenting evidence of a legitimate non-discriminatory reason for the
24 adverse action. *Id.* (citing *Renz v. Spokane Eye Clinic*, P.S., 114 Wn. App. 611, 618 (2002)).
25
26
27
28

1 Third, the burden then shifts back to Plaintiff to show that Boeing's proffered reason is
2 pretextual.

3 It is undisputed that Ms. Kang satisfies the second element as her employment was
4 terminated. Boeing disputes whether Ms. Kang engaged in a protected activity by asking a
5 question and whether there is a causal link between Ms. Kang's alleged protected activity and
6 her termination. *See* Dkt. #27. Boeing argues Ms. Kang's termination was due to her behavior
7 with coworkers and clients as discussed *supra*, not discrimination. Boeing points out that
8 although Ms. Kang claims she was retaliated against after raising concerns about her treatment
9 by BDS leadership, it is undisputed that Ms. Kang did not make a complaint about race-based
10 mistreatment to Boeing's Ethics, Human Resources, Law Department, or any other person at
11 Boeing. *Id* at 14. Boeing argues that Ms. Kang never raised these discriminations concerns to
12 anyone prior to her employment being terminated. Ms. Kang points to several conversations
13 about race but never claimed she was treated less favorably. Kang Dep. at 179:25-180:14;
14 275:10-16; 277:6-278:9; 279:13-281:1. Boeing further argues that Ms. Kang did not engage
15 in protected activity by asking a question about race and that caused her termination. Boeing
16 argues that Ms. Kang asking her manager if her race was a factor for being excluded from
17 meetings is not a statutorily protected action. Dkt. #27 at 14.

18 Ms. Kang does not respond to any of these arguments. *See* Dkt #39 at 19. The Court
19 agrees with Boeing and finds that she has failed to present an essential element of her
20 retaliation claim and dismissal under summary judgement is appropriate.

21 **4. Breach of Contract**

22 Ms. Kang's fourth claim is that Boeing breached its employment contract by terminating
23 her employment without following certain policies. Dkt #39 at 25.
24
25
26
27
28

1 Employment policies and procedures can create enforceable promises concerning terms
2 of employment when a company's written materials induce an employee to continue working by
3 creating an atmosphere of job security and fair treatment through promises of specific treatment
4 in specific situations. *Quedado v. Boeing Co.*, 168 Wn. App. 363, 367-68 (2012). To establish
5 such a claim, a plaintiff must show that she justifiably relied on an employer's statement, the
6 statement amounts to a promise of specific treatment in specific situations, and that the promise
7 was breached. *Id.* at 369.

9 Boeing argues that it did not breach any employment contract by terminating Ms.
10 Kang's at-will employment because the documents Ms. Kang relies on do not constitute an
11 enforceable contract. Dkt. #27 at 21. Boeing contends that the written materials Ms. Kang relies
12 on are Boeing's best practice guidance regarding discipline dismissal of employees known as
13 the Employee Corrective Action Process Requirements (ECARP), and PRO-1909 policies and
14 not an enforceable contract. Shapero Decl., ¶¶ 7–8, Exs. G, H. Furthermore, Boeing states that a
15 court has already held that the documents Ms. Kang relies on are not an enforceable contract in
16 another case. *See Leonard v. Boeing Co.* C19-956 TSZ, 2020 WL 5369301, at *4 (W.D. Wash.
17 Sep. 8, 2020). In *Leonard*, the court dismissed a similar breach of contract claim which relied
18 on the same internal policies and held as a matter of law that these policies were not promises of
19 specific treatment an employee could have reasonably relied on.

22 In her response, Ms. Kang argues that she was trained to follow the ECARB and PRO-
23 1909 processes and Boeing breached its contract by failing to apply them to her. Ms. Kang
24 argues there was management training that “stated with specificity—and *without* disclaimers
25 asserting no agreement could be formed—that Boeing would follow this process and managers
26 such as Kang were instructed to follow this process.” Dkt. #39 at 25 (emphasis in original).
27
28

1 Therefore, Ms. Kang reasonably relied on the training documents and assumed she would be
2 protected by the ECARB process to continue her employment. Kang Decl. at ¶ 28 & Ex. D. She
3 says that in her case Boeing did not follow the ECARB process as no ECARB board met and
4 she was not given a Corrective Action Memo, while in *Leonard* “the ECARB process was
5 followed but the employee was unhappy with the result.” *Id.* She argues that these facts make
6 her case distinguishable from *Leonard*.
7

8 The Court again ultimately agrees with Boeing. The trainings instructed Ms. Kang to
9 look at the written policy which states it is not a contract. On the first page of the training
10 documents Boeing included a paragraph stating “[t]his procedure does not constitute a contract
11 or contractual obligation, and the company reserves the right, in its sole discretion, to amend,
12 modify, or discontinue its use without prior notice, notwithstanding any person’s acts,
13 omissions, or statements to the contrary.” Dkt. #28 at 28-7 and 28-8. These procedures are thus
14 internal policies which provide a framework for employees and supervisors dealing with
15 different violations, not terms of a contract.
16
17

18 Furthermore, this Court is willing to apply the holding of *Leonard* to the facts of this
19 case. Given all the above, there is no genuine dispute as to the facts surrounding Ms. Kang’s
20 breach of contract claim. Accordingly, this claim is properly dismissed on summary judgment.
21

22 **5. Hostile Work Environment**

23 Ms. Kang’s fifth claim is that she was subject to a hostile work environment due to her
24 Asian race. Dkt #39 at 25.

25 To prevail on a race-based hostile work environment claim under the WLAD, Plaintiff
26 must show: “(1) she was subjected to verbal or physical conduct of a racial . . . nature; (2) the
27 conduct was unwelcome; and (3) the conduct was sufficiently severe or pervasive to alter the
28

1 conditions of the plaintiff's employment and create an abusive work environment." *Gregory v.*
2 *Widnall*, 153 F.3d 1071, 1074 (9th Cir. 1998). The conduct must also be imputable to the
3 employer. *Antonius v. King County*, 153 Wn.2d 256, 261, 103 P.3d 72 (2004). WLAD does not
4 contain its own limitations period. Discrimination claims must be brought within three years
5 under the general three-year statute of limitations for personal injury actions. *Id.* (citing RCW
6 4.16.080(2)). The continuing violation doctrine allows a plaintiff to seek relief for the
7 cumulative effects of repeated conduct that began outside the limitations period and continued
8 into the limitations period. *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 115-21, 122 S.
9 Ct. 2061, 153 L. Ed. 2d 106 (2002). However, this doctrine does not apply to discrete acts that
10 are time-barred, even when they relate to acts within the limitations period. *Id.* Furthermore, the
11 doctrine also does not apply to the continuing impact from a wrongful act outside the limitations
12 period. *Knox v. Davis*, 260 F.3d 1009, 1013 (9th Cir. 2001).

15 First, Boeing asserts that Ms. Kang's bases for this claim are time-barred as the
16 continuing violation doctrine does not apply to her. Boeing argues that all the "discrete acts"
17 Ms. Kang alleges occurred in 2020 or earlier. Dkt #27 at 18.

19 Second, Boeing argues even if Ms. Kang's claims are not time-barred, she fails to
20 provide any evidence of severe or pervasive race-based workplace harassment. *Id.* Boeing
21 argues out that although Ms. Kang claimed that Carol Hibbard excluded her from multiple
22 meetings, this was assumed by Ms. Kang, not based on actual knowledge. Boeing points to Ms.
23 Kang's depositions where she was asked if there was any way in which Ms. Kang believed Ms.
24 Hibbard treated her less favorably than others because of her race, to which Ms. Kang
25 responded "I don't know what she was thinking. So I can't say what actions were motivated by
26 racial animus versus not." Kang Dep. at 202:7-21. Boeing argues that Ms. Kang admitted she
27
28

1 had no basis her being excluded was due to any discriminatory reasons. Further, Boeing also
2 points out that Carol Hibbard testified she did exclude Ms. Kang from certain meetings but it
3 was because Ms. Kang was “difficult and argumentative, as because a P-8 customer requested
4 not to interact with her.” Dkt #28-6 (“Hibbard Dep.”), 12:13–17:20; 21:24–22:12.

5 Third, Boeing argues that Ms. Kang being told she was “wrong” does not constitute
6 race-based severe or pervasive workplace harassment. For example, Ms. Kang’s claims of
7 race-based mistreatment by Ann Marie Bender, BDS legal counsel, and Ms. Bender and
8 Rebecca Davies, Ms. Kang’s temporary manager, would “take turns, like, sniping at [her]”
9 while on a call with Ms. Kang. Kang Dep. at 189:1–10. Boeing again points to Ms. Kang’s
10 deposition where she testified “I don’t know what’s in her head,” and “I don’t know what
11 motivated her treatment of me” referring to Ms. Bender. *Id.* at 188:12–23. Additionally, Ms.
12 Kang testified “I don’t know what she did for what reason” and “I don’t know what’s in her
13 head.” *Id.* at 203:19-20 and 188:12– 16. Furthermore, when asked what Ms. Bender sniped at
14 Ms. Kang about, Ms. Kang responded, “I mean, I would say something—and this had been
15 going on for a long time, I mean, almost from the day I joined finance, where I would say
16 something, and whether it was Darrin, Ann Marie, or someone else, like they would say I was
17 wrong, for example.” Boeing emphasizes that Ms. Kang admitted she could be wrong in her
18 assumptions when she was asked if it was possible she was wrong to which she responded, “I
19 suppose so, yes.” *Id.* at 190:24–191:8. Boeing uses all of this to argue that Ms. Kang has no
20 good-faith basis-in-fact for her assertions that she was harassed because of her race.
21
22
23
24

25 Lastly, Boeing also points to several parts of Ms. Kang’s deposition and argues Ms.
26 Kang failed to show the BDS legal department engaged in race-based severe or pervasive
27 conduct. Dkt. #27 at 20. Boeing cites multiple parts in Ms. Kangs deposition where she asserted
28

1 she was yelled at and had unpleasant exchanges with Boeing attorneys Darrin Hostetler and
2 Jake Phillips. However, Boeing argues that Ms. Kang admitted the alleged poor treatment she
3 received was not because of her race, rather it was based on legal advice they disagreed on.
4 Additionally, Boeing argues Ms. Kang conceded she had “no idea if Phillips or Hostetler may
5 have similarly treated others outside her protected classes.” *Id.*
6

7 In her response, Ms. Kang does not respond to any of these arguments other than by
8 stating that she filed her case on February 9, 2024, therefore she still has a hostile work
9 environment claim for actions that occurred between February 9 and her termination on
10 February 11, 2021. Dkt. #39 at 25.
11

12 In its reply, Boeing argues Ms. Kang admitted that her claim can only be based on
13 harassing conduct that happened in the last few days she was employed at Boeing, but that she
14 does not point to any conduct that happened in those three days between February 9 and
15 February 11. Dkt. #42 at 7.
16

17 Ms. Kang has failed to demonstrate that Boeing’s employees alleged conduct was
18 sufficiently pervasive to constitute a constant hostile work environment. While it is true that a
19 workplace may still feel hostile even in the absence of race-based comments on a particular
20 day, the law requires more than isolated or discrete incidents. The comments Ms. Kang is
21 basing her claim on are discrete in nature and do not rise to the level of severity or
22 pervasiveness required to establish a race-based hostile work environment. Furthermore, Ms.
23 Kang admitted in her deposition she was assuming the comments were race motivated, but she
24 failed to provide any evidence her perception was correct. Her deposition testimony repeatedly
25 undermines her allegations. Additionally, her lack of a response in briefing leaves the Court
26 with nothing to refute Boeing’s arguments. Therefore, even seeing the comments in the light
27
28

1 most favorable to Ms. Kang, they are discrete at best and do not amount to pervasive behavior
2 by Boeing. Accordingly, this claim is properly dismissed on summary judgment.

3 **6. Fed. R. Civ. Proc. 56(d)**

4 Under Fed.R.Civ.P. 56(d), “the district court may refuse to grant the party’s application
5 for summary judgment if the opposing party needs time to discover central facts.” *Mackey v.*
6 *Pioneer Nat. Bank*, 867 F.2d 520, 523 (9th Cir. 1989)
7

8 Furthermore, if a nonmovant shows by declaration or affidavit it cannot present facts
9 essential to justify its opposition for specific reasons, the court may “(1) defer considering the
10 motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3)
11 issue any other appropriate order.” Fed. R. Civ. P. 56(d). The court may order a continuance for
12 a summary judgment motion if the requesting party “submits affidavits showing that, without
13 Rule 56 assistance, it cannot present facts necessary to justify its claims.” *Family Home and*
14 *Fin. Center, Inc. v. Fed. Home Loan Mortg. Corp.*, 525 F.3d 822, 827 (9th Cir. 2008). The
15 party making the request must show that “(1) it has set forth in affidavit form the specific facts
16 it hopes to elicit from further discovery; (2) the facts sought exist; and (3) the sought-after facts
17 are essential to oppose summary judgment.” *Id.* The party must also show it has diligently
18 pursued discovery. *Qualls By and Through Qualls v. Blue Cross of Cal., Inc.*, 22 F.3d 839, 844
19 (9th Cir. 1994). If the requesting party does not comply with these requirements, the court may
20 proceed to summary judgment. *Id.* The burden lies with “the party seeking additional discovery
21 to proffer sufficient facts to show that the evidence sought exists” and that it would prevent
22 summary judgment. *Nidds v. Schindler Elevator Corp.*, 113 F.3d 912, 921 (9th Cir. 1996).
23
24
25

26 In her response, Ms. Kang asserts this motion should be continued. Ms. Kang argues
27 that “Boeing has still yet to produce the bulk of Electronically Stored Information (“ESI”) it
28

1 possesses that may be responsive to discovery requests issued to Boeing over nine months ago”
2 Dkt. #39 at 25-26.

3 In its reply, Boeing argues that Ms. Kang has failed to identify any specific fact she
4 would obtain with further discovery as requested. Boeing asserts that this “vague assertion” is
5 insufficient as a matter of law.” Dkt #42 at 12. (citing *Moba*, 16 F. Supp. 3d at 1262.) Boeing
6 further argues that Ms. Kang remained silent on her alleged discovery diligence because she is
7 unable to do so in good faith. Boeing argues that Ms. Kang did not serve any discovery
8 requests until six months after filing her lawsuit and she did not request an ESI search after a
9 year of her initial filing. Moreover, Boeing points out to several instances where Ms. Kang
10 failed to request discovery in a timely manner and missed deadlines. For these reasons Boeing
11 argues the Court should deny Ms. Kang’s request. *Id.* at 13.
12

13
14 The discovery process has now closed, and Ms. Kang does not point to any specific
15 evidence or central facts she is hoping to discover. Merely suggesting that further discovery
16 might uncover something useful, particularly at this late stage of discovery, is insufficient to
17 delay a resolution. This request is denied.
18

19 IV. CONCLUSION

20 Having considered the briefing and the remainder of the record, the Court hereby finds
21 and ORDERS that Defendants’ Motion for Summary Judgment, Dkt. #27, is GRANTED.
22 Plaintiff’s claims are DISMISSED. This case is CLOSED.
23

24 DATED this 21st day of July, 2025.

25
26 

27 RICARDO S. MARTINEZ
28 UNITED STATES DISTRICT JUDGE